

REVENUE SCOTLAND AND TAX POWERS ACT 2014

EXPLANATORY NOTES

THE ACT

Schedule 2 – the Scottish Tax Tribunals

Part 1 – Appointment of members

President of the Tax Tribunals: eligibility for appointment

311. [Paragraph 1](#) makes provision additional to section 22 concerning the President of the Tax Tribunals. To be appointed, a person must have the experience, qualifications and training in relation to tax law and practice that the Scottish Ministers consider appropriate and be practising and have at least 10 years' experience as a solicitor or advocate in Scotland. The Scottish Ministers may prescribe criteria alternative to 10 years' experience as a Scottish lawyer by regulations (see paragraph 8).

First-tier Tribunal: ordinary members

312. [Paragraph 2](#) provides that the Scottish Ministers must appoint ordinary members of the First-tier Tribunal (after consulting the Lord President) and will, by regulations, define the experience, qualifications and training required to be appointed as an ordinary member of the First-tier Tribunal.

First-tier Tribunal: legal members

313. [Paragraphs 3 and 4](#) provide that the Scottish Ministers must appoint legal members of the First-tier Tribunal (after consulting the Lord President). To be appointed a person must have the experience, qualifications and training in relation to tax law and practice that the Scottish Ministers consider appropriate and be practising and meet the criteria set out in paragraph 3 and 4. These are that the person is practising and has practiced for a period of not less than 5 years as a solicitor or advocate in Scotland; and meets a description to be specified by the Scottish Ministers in regulations (see also paragraph 8).

Upper Tribunal: legal members

314. [Paragraphs 5 and 6](#) provide that the Scottish Ministers must appoint legal members of the Upper Tribunal (after consulting the Lord President). To be appointed a person must have the experience, qualifications and training in relation to tax law and practice that the Scottish Ministers consider appropriate and meet the criteria set out in paragraph 6. These are that the person is practising and has been practising for a period of not less than 10 years as a solicitor or advocate in Scotland and meets a description to be specified by the Scottish Ministers in regulations (see also paragraph 8).

Disqualification from office

315. [Paragraph 7](#) lists positions that would disqualify a person from being President or a member of the Tax Tribunals.

Eligibility under regulations

316. [Paragraphs 8](#) and [9](#) provide further detail about the content of the regulations that can be made under paragraphs 1(3), 4(2) and 6(2). In particular, they allow for regulations to take account of practice as a solicitor or barrister in England and Wales or Northern Ireland or in certain legal work outside practice or employment as a lawyer.

Part 2 – Conditions of membership etc.

Application of this Part

317. [Paragraph 10](#) sets out that this Part will apply to ordinary and legal members of the Tax Tribunals, but not judicial members and also details the paragraphs that apply to the President of the Tax Tribunals.

Initial period of office

318. [Paragraph 11](#) sets out that a person appointed to the Tax Tribunals holds the position for five years.

Reappointment

319. [Paragraphs 12, 13](#) and [14](#) allow for the reappointment of members of the Tax Tribunal for a period of five years and sets out the exceptions that would prevent reappointment.

Appointment to position of President

320. [Paragraph 15](#) provides that the appointment of a legal member of the First-tier or Upper Tribunal as President supersedes the earlier appointment as a legal member.

Termination of appointment

321. [Paragraph 16](#) sets out the ways in which a member of the Tax Tribunals can cease to hold the position.

Pensions etc.

322. [Paragraph 17](#) provides for the Scottish Ministers to make arrangements in relation to pensions, allowances and gratuities.

Oaths

323. [Paragraph 18](#) sets out that all members of the Tax Tribunals must swear an oath in the presence of the President of the Tax Tribunals

Other conditions

324. [Paragraph 19](#) provided that Scottish Minister may set the terms and conditions on which members of the Tax Tribunal hold the position.

Part 3 - Conduct and discipline

Application of this Part

325. Paragraph 20 sets out that this Part will apply to ordinary and legal members of the Tax Tribunals, but not judicial members and also details the paragraphs that apply to the President of the Tax Tribunals.

Conduct rules

326. Paragraphs 21, 22 and 23 set out the Scottish Ministers' responsibility for the conduct of members of the Tax Tribunals, provides power for Ministers to make regulations regarding the conduct and details what these regulations may contain.

Reprimand etc.

327. Paragraphs 24 and 25 provide for disciplinary action to be taken against members of the Tax Tribunal by the President of the Tax Tribunals.

Suspension of membership

328. Paragraphs 26 and 27 provide for the suspension of members of the Tax Tribunal by the President of the Tax Tribunals.

Judicial Complaints Reviewer

329. Paragraphs 28 and 29 set out the role of the Judicial Complaints Reviewer, established under the Judiciary and Courts (Scotland) Act 2008, in relation to the Tax Tribunals.

Part 4 – Fitness and removal

Application of this Part

330. Paragraph 30 sets out that this Part will apply to ordinary and legal members of the Tax Tribunals, but not judicial members and also details the paragraphs that apply to the President of the Tax Tribunals.

Constitution and procedure

331. Paragraphs 31 and 32 set out the arrangements that relate to a fitness assessment tribunal. The purpose of the fitness assessment tribunal is to determine whether a member of the Tax Tribunal is fit to hold the position of member of the tribunals, as set out in paragraph 31(3).

Composition and remuneration

332. Paragraphs 33 and 34 provide for who will sit on a fitness assessment tribunal and their remuneration.

Proceedings before fitness assessment tribunal

333. Paragraphs 35 and 36 provide for the proceedings a fitness assessment tribunal will follow.

Suspension during investigation

334. Paragraphs 37, 38 and 39 provide for the suspension of a member of the Tax Tribunals at any time before a fitness assessment tribunal reports.

Report and removal

335. [Paragraphs 40 and 41](#) set out the reporting arrangements of a fitness assessment panel and allow for the removal of a member of the Tax Tribunals if the member is found to be unfit.

Application of this Part to the President of the Tax Tribunals

336. [Paragraph 42](#) sets out which paragraphs of Part 4 of Schedule 1 apply to the President of the Tax Tribunals.

Interpretation

337. [Paragraph 43](#) sets out how unfitness to hold a position as a member of the Tax Tribunals should be interpreted.